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OFFICE OF PETITIONS

In re Application of
B. Reilly Barry et al.
Application No. 09/159,503
Filed: September 24, 1998
Attorney Docket No. COS-97-101

ON PETITION

This is a decision on the renewed petitions under 37 CFR 1.48 and under 37 CFR 1.47(a), filed on July 22, 2005.

The petition under 37 CFR 1.48 is GRANTED.
The petition under 37 CFR 1.47(a) is GRANTED.

The application was filed naming B. Reilly Barry, Mark A. Chodoronek, Eric DeRose, Mark N. Gozales, Angela R. James, Lynne Levy and Michael Tusa as joint inventors. It was later learned that Carol Y. Devine was also a co-inventor and petitioner seeks under 37 CFR § 1.48(a) to amend the inventive entity by the addition of Carol Y. Devine. 37 CFR § 1.48(a) requires that an amendment to the named inventive entity be accompanied by:

- (1) a petition including a statement from *each person being added* and from each person being deleted as an inventor that the error occurred without deceptive intention on his or her part;
- (2) an oath or declaration by each actual inventor or inventors as required by 37 CFR 1.63 or as permitted by 37 CFR 1.42, 1.43 or 1.47;
- (3) the fee set forth in 37 CFR 1.17 (I); and
- (4) the written consent of any existing assignee, if any of the originally named inventors has executed an assignment.

A petition filed July 29, 2004 under 37 CFR 1.48 and 37 CFR 1.47(a) was dismissed in a decision mailed May 5, 2005 because the supplemental oath or declaration was not executed by joint inventors DeRose and Levy and because petitioners had not shown that joint inventor DeRose could not be located.

The renewed petition is accompanied by a supplemental oath or declaration, executed by previously non-signing inventor DeRose, which states that the error in the inventive entity arose without deceptive intent, and thus petitioners have now supplied a supplemental oath or declaration signed by all of the actual inventors, except joint inventor Levy.

Petitioners maintain their argument that joint inventor Levy appears either unwilling or unable to cooperate with the furthering prosecution of the above-identified application and in lieu of a declaration executed by Ms. Levy, seeks status under 37 CFR § 1.47(a).

A grantable petition under 37 CFR § 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee; and
- (4) a statement of the last known address of the non-signing inventor.


Petitioners have shown that a package was mailed to the last known address for Ms. Levy and that it was undeliverable. It is assumed that with respect to Ms. Levy, that the address was correct but that the delivery of the package was just refused. If this is incorrect, petitioners should apprise the Office of the facts surrounding the package to Ms. Levy immediately.

Petitioners have submitted a statement of lack of deceptive intent executed by Ms. Devine and an assent of assignee to correction and/or addition of inventor.

As a result of papers filed July 29, 2004 and July 22, 2005, it has been found that this nonprovisional application, as filed, through error and without deceptive intent, improperly set forth the inventorship, and, accordingly, this application has been corrected in compliance with 37 CFR 1.48. The inventorship of this application has been changed by the addition of Caroly Y. Devine.

This matter will be referred to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, correction of the file and PTO PALM data to reflect the inventorship as corrected. Thereafter, the matter will be referred to the Publishing Division to be processed into a patent.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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Office of Petitions